IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

CRL.A.No. 629 of 2005()

AGAINST THE JUDGEMENT/ORDER IN CRLP.39/2005 Dated 17/01/2005
ST.689/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III,
TRIVANDRUM

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APPELLANT: COMPLAINANT.

FIRST INDIA CARGO PVT.LTD.,
A COMPANY INCORPORATED UNDER THE COMPANIES ACT
HAVING ITS OFFICE AT SOUPARNIKA NO.74, MANAVA
NAGAR, PALKULANGARA POST, TRIVANDRUM 24,
REP. BY ITS SENIOR EXECUTIVE R.RAKESH CHANDRAN.

BY ADV. SRI.K.L.NARASIMHAN

RESPONDENTS: ACCUSED.

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1. O.G.HARIRAJ, PROPRIETOR OF TRANS IT
FREIGHT FORWARDERS, THIRUVANANTHAPURAM 8, R/A.
T.C.31/955(2) AYANIKKAD LANE, PALKULANGARA,
PETTAH POST, TRIVANDRUM 24.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL
PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 629 of 2005

Dated this the 7th March, 2007.

J U D G M E N T

The complainant was before the lower court with a complaint under Section 138 of the Negotiable Instruments Act, against the first respondent, accused. When the case was posted before the Judicial First Class Magistrate Court-III, Thiruvananthapuram, as S.T.No.689/2003, the appellant, complainant was absent. There being no application made, the complaint was dismissed, and accused acquitted. Hence, this appeal after obtaining leave of this Court.

2. Counsel appearing for the appellant submits that an application to condone the absence of the complainant was in fact made. But the same was not brought to the notice of the court below.

3. After hearing the matter, I am of the opinion that an opportunity be given to both parties to adduce evidence. Therefore, I set aside the impugned order, dated 4.9.2004, and restore S.T.No.689/2003, to the file of the Judicial First Class Magistrate Court-III, Thiruvananthapuram.

4. The parties shall appear before the court below on 10.4.2007.

5. The learned Magistrate shall dispose of the matter, as per the law, within four months from the date of appearance of the parties before that court.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.